

EXHIBIT 3

In The Matter Of:

ANDERSON NEWS, LLC

v.

AMERICAN MEDIA INC., et al.

DR. THOMAS Z. LYS - Vol. 1

September 19, 2014

MERRILL CORPORATION

Legalink, Inc.

1345 Avenue of the Americas
17th Floor
New York, NY 10105
Phone: 212.557.7400
Fax: 212.367.6178

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDERSON NEWS, L.L.C. and LLYOD
WHITAKER, as Assignee under an Assignment
for the benefit of Creditors for Anderson
Services, L.L.C.,

Plaintiffs,
Civil Action No.

-against- 09-CIV-2227

AMERICAN MEDIA, INC., BAUER PUBLISHING
CO., L.P., CURTIS CIRCULATION COMPANY,
DISTRIBUTION SERVICES, INC., HACHETTE
FILIPACCHI MEDIA, M.S., INC., HEARST
COMMUNICATIONS, INC., HUDSON NEWS
DISTRIBUTORS, L.L.C., KABLE DISTRIBUTION
SERVICES, INC., RODALE, INC., TIME INC.,
and TIME/WARNER RETAIL SALES & MARKETING
INC.,

Defendants.

-----x

AMERICAN MEDIA, INC., HEARST
COMMUNICATIONS, INC., and TIME INC.,
Counterclaim-Plaintiffs

-against-

ANDERSON NEWS, INC., and CHARLES
ANDERSON, JR.,

Counterclaim-Defendants

-----x

September 19, 2014
9:14 a.m.

Videotaped Deposition of DR. THOMAS Z.
LYS, taken by Defendants, pursuant to Notice,
at the offices of Cravath, Swaine & Moore, LLP,
825 Eighth Avenue, New York, New York, before
William Visconti, a Shorthand Reporter and
Notary Public within and for the State of New
York.

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1

2

Solutions and you may swear the witness.

09:15:48

3

T H O M A S Z. L Y S,

09:15:50

4

having been first duly sworn by the Notary Public,

09:15:50

5

was examined and testified as follows:

09:15:50

6

EXAMINATION CONDUCTED BY MR. RYAN:

09:15:52

7

Q. Good morning.

09:15:52

8

A. Good morning, Mr. Ryan.

09:16:00

9

Q. Could you please state your full

09:16:01

10

name for the record?

09:16:04

11

A. My name is Thomas Z. Lys.

09:16:04

12

Q. Have you been retained as an expert

09:16:07

13

in this case?

09:16:10

14

A. Yes, I have.

09:16:11

15

Q. By whom were you retained?

09:16:12

16

A. I have been retained by counsel for

09:16:19

17

Plaintiffs.

09:16:21

18

Q. And is that both Anderson News and

09:16:22

19

Anderson Services?

09:16:25

20

A. That's correct.

09:16:26

21

(Lys Exhibit 1 for identification,

09:16:26

22

Expert report of Doctor Lys.)

09:16:34

23

Q. Let me hand you what we previously

09:16:34

24

marked as Lys Exhibit 1. Is Lys Exhibit 1 a true

09:16:36

25

and accurate copy of an expert report that you

09:16:52

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2 known or knowable as of February '09. 11:17:24

3 Q. And this case Defendants' alleged 11:17:28
4 unlawful conduct is the antitrust conspiracy that 11:17:32
5 the Plaintiffs in this case claim took place, 11:17:37
6 right? 11:17:40

7 A. That's my understanding, yes. 11:17:40

8 Q. You don't have any opinion as to 11:17:42
9 whether in fact there was an antitrust conspiracy 11:17:47
10 or not, right? 11:17:51

11 A. I do not. 11:17:52

12 Q. Do you agree then if there was an 11:17:53
13 industry downturn in the real world, you would 11:17:55
14 include that in your but for world as well? 11:17:59

15 A. No, I do not agree with that. 11:18:02

16 Q. Do you agree that if there was an 11:18:04
17 industry downturn that was known or knowable in 11:18:06
18 the real world as of February 10th, 2009 that you 11:18:10
19 would include that in your but for world as well? 11:18:13

20 A. Yes. 11:18:15

21 Q. Do you agree that if Anderson 11:18:18
22 management managed the business badly in the real 11:18:22
23 world, that you would include that in the but for 11:18:27
24 world as well? 11:18:29

25 MR. PAMPHILIS: Objection to form. 11:18:29

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2 this matter management forecasts?

11:38:00

3 A. Yes.

11:38:05

4 Q. Those included at least annual

11:38:05

5 budgets for Anderson News and Anderson Services?

11:38:08

6 A. I did not base my model on budgets,

11:38:09

7 but I did see revenue forecasts by management.

11:38:14

8 Q. What revenue forecasts are by

11:38:24

9 management did you see?

11:38:27

10 A. There was a November forecast of

11:38:27

11 revenue by management that I used in my model. I

11:38:29

12 believe it was November, I'm speaking from memory,

11:38:40

13 so. Sometime late '08, I believe it is November.

11:38:42

14 It was a five-year forecast.

11:38:48

15 Q. Is this the five-year forecast that

11:38:50

16 was used for the testing of goodwill for impairment?

11:39:00

17 A. This was a forecast that was later

11:39:06

18 used by Ernst & Young in their audit work. I

11:39:10

19 suspect it was used for impairment tests whether

11:39:18

20 it was goodwill or anything else, I did not

11:39:23

21 investigate. But I know this was a forecast that

11:39:25

22 was handed over to Ernst & Young.

11:39:27

23 Q. So now we are on the same page. I

11:39:29

24 now understand what the forecast is that you're

11:39:33

25 talking about.

11:39:35

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2 differ. I don't understand differ. If differ 11:44:08
3 means it is not identical, I agree. If you're 11:44:11
4 asking me do I consider and rely on management's 11:44:15
5 forecast, the answer is yes. My revenue forecast 11:44:22
6 has five legs and management is one of the legs. 11:44:26

7 Q. And you ended up using a different 11:44:31
8 revenue forecast as a result of your five legs 11:44:34
9 from management's forecast, right? 11:44:37

10 A. Yes. I have done this in virtually 11:44:39
11 every DCF. It is rare to rely a hundred percent 11:44:42
12 on a single source and particularly management. 11:44:50

13 Q. Were the DCF models for Anderson 11:44:58
14 News and Anderson Services that you prepared, 11:45:02
15 prepared for purposes of this litigation? 11:45:05

16 A. Again, I'm trying to understand how 11:45:17
17 to -- what your question is all about. I was hired for 11:45:19
18 the purpose of this litigation. I prepared these 11:45:23
19 models. I did not use anybody else's models. 11:45:25
20 Does this answer your question. 11:45:38

21 Q. It does. They were models that you 11:45:38
22 prepared for purposes of this lawsuit, right? 11:45:40

23 MR. PAMPHILIS: Objection, form. 11:45:43

24 A. I prepared this to value Anderson. 11:45:44
25 If you asked me to value Anderson's assets absent 11:45:50

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2 those are the discussions that we had. 11:59:06

3 Q. Was it important for you whether 11:59:07

4 there was contemporaneous documentation prepared 11:59:09

5 by Anderson management before the companies went 11:59:12

6 out of business -- 11:59:15

7 MR. PAMPHILIS: Objection to form. 11:59:16

8 Q. -- that showed an expectation that 11:59:17

9 Anderson News would become profitable without a 11:59:22

10 per copy surcharge? 11:59:25

11 MR. PAMPHILIS: Objection to form. 11:59:26

12 A. I didn't see -- I don't recall 11:59:26

13 seeing a document of that nature. But all of my 11:59:32

14 discussions with management -- many, not all, many 11:59:37

15 of my discussions with management were is this 11:59:40

16 consistent with contemporaneous documents that you 11:59:45

17 have. For example the cost-cutting are based on 11:59:49

18 the data that were available 2013, in this year 11:59:57

19 2014 that are based on contemporaneous documents. 12:00:05

20 So, yes, of course. 12:00:13

21 Q. Were you supported in your work in 12:00:14

22 this case by a team of other individuals? 12:00:18

23 MR. PAMPHILIS: Objection to form. 12:00:20

24 A. Yes. 12:00:21

25 Q. Who are they? 12:00:24

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2 data were unreliable? 12:22:44

3 A. I don't remember. But my team 12:22:45

4 determined that was the case. 12:22:47

5 Q. Somebody at Bates White? 12:22:48

6 A. They did not make that up. I 12:22:50

7 believe this is the information we got when we 12:22:53

8 obtained the data. 12:22:56

9 Q. Did you conclude that the Magnet 12:22:57

10 data for 2007 and years going forward were 12:22:59

11 reliable? 12:23:03

12 MR. PAMPHILIS: Objection, form. 12:23:05

13 A. Yes. 12:23:07

14 Q. Now, was the third input that you 12:23:10

15 used in arriving at your 6.81 percent weighted age 12:23:11

16 price growth a Bureau Of Labor Statistics price 12:23:19

17 index? 12:23:25

18 A. Correct. 12:23:25

19 Q. And is the Bureau Of Labor 12:23:25

20 Statistics a U.S. Government entity? 12:23:29

21 A. I believe so. But I'm not definite 12:23:30

22 on that. 12:23:38

23 Q. In any event you're aware that it's 12:23:38

24 an official source of price indices widely used by 12:23:42

25 economists? 12:23:48

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2 in Services. And so he doesn't understand that 12:33:02
3 and therefore doesn't adjust his revenue and price 12:33:09
4 forecasts suddenly don't match with the quantity 12:33:17
5 forecast. 12:33:23

6 If you want to do this correctly 12:33:23
7 manipulating one at a time what you have to do is 12:33:25
8 lower the price trend as he did, but then take 12:33:28
9 into account the resulting increase in volume. 12:33:35
10 Remember, the volume is by backing out prices and 12:33:39
11 revenue. He doesn't do that. 12:33:43

12 So I think he fundamentally doesn't 12:33:48
13 understand my model and it is very dangerous to 12:33:51
14 manipulate a model that you don't understand. I'm 12:33:54
15 telling you if you do that correctly you actually 12:33:58
16 get plus I think 28 million, I don't remember. I 12:34:00
17 just did it quickly. 12:34:03

18 Q. You get -- 12:34:04

19 A. His conclusion is wrong. 12:34:06

20 Q. You get plus 28 million using a 6 12:34:08
21 percent price growth rate? 12:34:13

22 A. Whatever his change was, I forgot. 12:34:14

23 Q. This is a calculation that you 12:34:18
24 performed this morning? 12:34:20

25 A. Yes. 12:34:20

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2 Q. Didn't you tell me earlier today 12:34:21
3 that you hadn't performed any calculations since 12:34:23
4 you submitted your July report? 12:34:27

5 MR. PAMPHILIS: Objection to form. 12:34:28

6 A. This was not the calculation. This 12:34:29
7 is just trying to understand what was going on in 12:34:31
8 his critique. But I mean if this is -- I revise 12:34:34
9 my statement to include this. 12:34:38

10 Q. Are there any other calculations of 12:34:41
11 this type that you performed since you submitted 12:34:43
12 your July report? 12:34:46

13 A. I mean this was all done in 12:34:47
14 preparation for here. So I understand what the 12:34:48
15 criticism goes and why he is getting these strange 12:34:51
16 results. Let me remember. Not that I remember 12:34:55
17 right now. If I do I will certainly tell you. 12:35:05

18 Q. What I think you're saying is that 12:35:09
19 if the cover price growth rate assumption in your 12:35:12
20 DCF model is lowered, that will to some extent 12:35:20
21 raise the unit growth rate in your model? 12:35:27

22 A. Because of the way the units are 12:35:31
23 computed, yes. 12:35:34

24 Q. It would make the decline in units 12:35:35
25 somewhat less than what you have shown in your 12:35:39

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2 hasn't picked up. In fact particularly the 13:21:34

3 European Central Bank is worried about inflation. 13:21:37

4 They have changed their interest rate to 0 in 13:21:42

5 which they are lending banks. 13:21:46

6 Q. Turn to paragraph 171 of your 13:21:47

7 report? 13:21:49

8 A. Of my initial report. 13:21:50

9 Q. Yes, sir. Do you see that in 13:21:51

10 paragraph 171 you write, "Where appropriate I 13:22:00

11 apply an inflation rate using the core CPI rate 13:22:03

12 forecast from January 27th, 2009 obtained from the 13:22:06

13 CBO."? 13:22:11

14 A. Yes, I see that. 13:22:12

15 Q. Is the credit CBO the Congressional 13:22:13

16 Budget Office? 13:22:17

17 A. That's correct. 13:22:17

18 Q. And is it the case that as of the 13:22:18

19 end of January, 2009 the CBO forecasts what the 13:22:21

20 inflation rate using the core CPI would be? 13:22:26

21 A. Yes. 13:22:30

22 Q. And they forecast that for the 13:22:32

23 years 2009 through 2013 that the core CPI would be 13:22:34

24 2 percent or less each year, didn't they? 13:22:40

25 A. That's correct, yes. 13:22:43

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2 Q. But your DCF you used magazine 13:22:44

3 price increases of 6.81 percent, right? 13:22:48

4 MR. PAMPHILIS: Objection to form. 13:22:56

5 A. I mean I don't know how to explain, 13:22:57

6 but if your question is do I use, the answer is 13:23:00

7 yes. 13:23:04

8 Q. So that's a price increase much 13:23:04

9 higher than the then forecast general rate of 13:23:08

10 inflation on consumer goods, right? 13:23:13

11 MR. PAMPHILIS: Objection to form. 13:23:15

12 A. It is and it's completely 13:23:16

13 irrelevant. I mean you are making an apple to 13:23:19

14 bananas comparison that an economist would never 13:23:26

15 make. 13:23:28

16 Q. Do you believe that magazine cover 13:23:31

17 prices generally track CPI during this period? 13:23:32

18 A. I neither believe or disbelieve 13:23:35

19 this. 13:23:37

20 Q. Have you looked into that question? 13:23:37

21 A. No, I have a forecast of magazine 13:23:39

22 prices. I don't know why I would want to muddy it 13:23:41

23 up with some beliefs. I have a forecast of what 13:23:46

24 magazine prices are doing and that is my best 13:23:51

25 forecast for the future. The CPI, core or noncore 13:23:55

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2 approach. There are other approaches and other 13:36:36

3 experts may exercise their judgement differently. 13:36:43

4 I have exercised my judgment and based on what I 13:36:47

5 have seen in the other experts, I don't see any 13:36:51

6 reason to change my judgment. 13:36:54

7 Q. You don't believe the frequency 13:36:58

8 with which magazines change their cover prices 13:36:59

9 would affect the time period over which you would 13:37:03

10 want to study industrywide average price 13:37:06

11 increases? 13:37:11

12 MR. PAMPHILIS: Objection to form. 13:37:11

13 A. I don't see that that adds a bias. 13:37:12

14 As I told you, I simply didn't have longer time 13:37:17

15 periods. If I had longer time periods I would 13:37:25

16 have used them. 13:37:29

17 Q. I think you told me that you did 13:37:29

18 have available to you internal data from Anderson 13:37:31

19 News over longer time periods before 2007? 13:37:36

20 A. I'm not sure what I said. Can you 13:37:39

21 remind me what I said? 13:37:40

22 Q. Yes. Do you recall that I showed 13:37:42

23 you your figure 35 on page 59 of your initial 13:37:43

24 report and you talked about how that was the 13:37:48

25 annual change in 2008 or 2007 and I asked you 13:37:49

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2 whether you had available Anderson internal data 13:37:52

3 from earlier years and you told me you did. 13:37:55

4 Right? 13:37:57

5 A. Yes. 13:37:57

6 Q. So you could have studied these 13:37:57

7 price changes over a longer period? 13:38:00

8 A. I could have, yes. The question is 13:38:02

9 whether they are really predictive of what is 13:38:04

10 going to happen in the future and I made a 13:38:08

11 judgment to restrict myself to these periods that 13:38:10

12 I have used. 13:38:13

13 Q. Another input in your DCF besides 13:38:17

14 the cover price growth rate is the unit growth 13:38:21

15 rate? 13:38:25

16 A. That's correct. 13:38:25

17 Q. Turn to figure 14 on page 30 of 13:38:26

18 your report. Did you use a negative 8.04 annual 13:38:29

19 growth rate? 13:38:36

20 A. Which page? 13:38:37

21 Q. Page 30, figure 14 and my question 13:38:38

22 is did you use a negative 8.04 percent unit growth 13:38:43

23 rate? 13:38:49

24 A. Yes, that is my prediction for the 13:38:50

25 future, yes. 13:38:52

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2 Q. Is that a way of saying that the 13:38:52
3 number of magazine units will decline by 8.04 13:38:56
4 percent a year? 13:39:04

5 MR. PAMPHILIS: Objection to form. 13:39:05

6 A. That is my estimate of the decline, 13:39:06
7 yes. 13:39:13

8 Q. And am I right that you used the 13:39:13
9 five inputs as shown there in figure 14? 13:39:17

10 A. That's correct. 13:39:22

11 Q. Now, the first four of those five 13:39:25
12 inputs, the management forecast, the Time 2009 13:39:27
13 budget, the industry forecast IBIS, I-B-I-S, and 13:39:31
14 industry forecast PWC, were those all in fact 13:39:37
15 revenue forecasts? 13:39:42

16 A. They were revenue forecasts and I 13:39:44
17 used my price forecast to match this series. From 13:39:46
18 the revenue forecast I backed out the implied unit 13:39:51
19 increase and this is the issue that I discussed 13:39:55
20 with you earlier that Mr. Beaton I think misses. 13:39:58

21 Q. So if your price increase rate is 13:40:02
22 wrong then your unit rate of decline would also be 13:40:08
23 wrong, right? 13:40:13

24 MR. PAMPHILIS: Objection to form. 13:40:14

25 A. I think this is a misleading -- I 13:40:14

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2 was a trick there somewhere. 13:44:44

3 Q. No, no trick. You're aware in fact 13:44:46
4 efficiency in that sense declined over the period 13:44:54
5 2009 to 2013? 13:44:57

6 MR. PAMPHILIS: Objection to form. 13:44:59

7 A. In hindsight? 13:45:00

8 Q. Yes. 13:45:00

9 A. Yes, as I stated in my report this 13:45:02
10 is the wrong way of looking at the issue. Because 13:45:04
11 had efficiency increased, I still would have used 13:45:07
12 my forecast. I discussed my assumptions about 13:45:13
13 efficiency with management and they concluded that 13:45:20
14 it was reasonable. I also looked historically and 13:45:23
15 while quarter over quarter efficiency fluctuated, 13:45:28
16 it is relatively constant historically. So I 13:45:32
17 really had no reason to manipulate that. 13:45:37

18 The final reason not to manipulate 13:45:44
19 efficiency is that the but for model uses the 2 13:45:50
20 percent concession and the 2 percent concession 13:45:55
21 doesn't change the economics of efficiency. Had 13:46:03
22 my but for model been based on the 7 cents 13:46:07
23 surcharge as opposed to the 2 percent concession, 13:46:12
24 I would actually have to increase efficiency. 13:46:17
25 Because one of the purposes that because my but 13:46:21

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2 for world is driven by an unchanged economic 13:46:25
3 situation as to efficiency, it is the most 13:46:29
4 reasonable thing to do under the circumstances to 13:46:35
5 maintain efficiency as the economics dictated at 13:46:40
6 the time. 13:46:45

7 Q. Do you agree that in the years up 13:46:45
8 to and through 2008 in fact efficiency as you're 13:46:49
9 using that term was declining? 13:46:55

10 MR. PAMPHILIS: Objection to form. 13:46:58

11 A. It declined to the level that I 13:46:59
12 used, yes. But, again, fluctuations in efficiency 13:47:01
13 historically have not been huge. The market 13:47:05
14 shares have not been huge. There doesn't seem to 13:47:09
15 be a lot of -- that is one part of the history 13:47:13
16 that is relatively stable. 13:47:15

17 Q. But you would agree, for instance, 13:47:16
18 in the period 2004 through 2008 Anderson's 13:47:18
19 efficiency declined, right? 13:47:22

20 A. I don't remember. We could look at 13:47:23
21 the data. 13:47:25

22 Q. And efficiency declined industrywide 13:47:25
23 during that period, didn't it? 13:47:29

24 MR. PAMPHILIS: Objection to form. 13:47:30

25 A. I don't recall the number. I mean, 13:47:31

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2 A. That's correct. I mean it is 14:10:44
3 called working capital. The difference between 14:10:49
4 accounts receivable and accounts payable is called 14:10:51
5 working capital. It is not called negative 14:10:55
6 working capital. 14:10:58

7 Q. Is a working capital deficit 14:10:59
8 sometimes also called negative working capital? 14:11:01

9 A. It is. 14:11:04

10 Q. Are accounts payable the amounts 14:11:04
11 Anderson News owed to suppliers but had not paid? 14:11:07

12 A. The accounts payable was credit 14:11:11
13 extended to Anderson by its suppliers, yes. 14:11:14

14 Q. So they are amounts that Anderson 14:11:17
15 News owed to suppliers but had not paid? 14:11:21

16 MR. PAMPHILIS: Objection to form. 14:11:22

17 A. That's correct. 14:11:23

18 Q. Were those suppliers mostly 14:11:24
19 magazine and book publishers? 14:11:26

20 MR. PAMPHILIS: Objection to form. 14:11:28

21 A. I don't know what mostly means, but 14:11:30
22 they were publishers, yes. 14:11:33

23 Q. By dollar value, was most of the 14:11:37
24 accounts payable amounts that Anderson News owed 14:11:39
25 to magazine and book publishers? 14:11:42

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2 A. I have clarity about Impact II. I 14:39:55
3 just didn't see a signed document or anything 14:39:59
4 executed in regards to Impact II. I believe it 14:40:01
5 was never executed. 14:40:04

6 Q. Do you agree that all Comag titles 14:40:12
7 were not going to participate in Impact II? 14:40:15

8 MR. PAMPHILIS: Objection to form. 14:40:19

9 A. I don't recall. 14:40:21

10 Q. Are you familiar with the discounts 14:40:24
11 that any publishers gave to other wholesalers 14:40:26
12 after Anderson News shut down. 14:40:29

13 A. Before I answer that let me tell 14:40:39
14 you it is irrelevant because I'm modeling the but 14:40:41
15 for world. You're telling me in the world where 14:40:44
16 the conspiracy happened and Anderson shut down 14:40:47
17 what were the discounts. I don't think that is 14:40:51
18 the right way of thinking what would have happened 14:40:54
19 in the but for world. I think that is very 14:40:57
20 misleading and contrary to basic economics. 14:41:02

21 Q. Are you familiar with the discounts 14:41:07
22 that any publishers gave to other wholesalers 14:41:10
23 after Anderson News shut down? 14:41:14

24 A. I don't recall precisely right now. 14:41:15
25 I believe I saw some evidence particularly in your 14:41:20

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2 stating like we can't afford it or something like 14:45:18

3 that. I remember a statement by AMI, yes I do. 14:45:22

4 Q. That statement wouldn't support by 14:45:35

5 itself a conclusion that AMI would be willing to 14:45:37

6 give a 2 percent price concession if anything 14:45:40

7 would point the other way, right? 14:45:42

8 MR. PAMPHILIS: Objection to form. 14:45:43

9 A. Not at all. Not at all. When I'm 14:45:44

10 trying to buy a car the dealer tells me he can't 14:45:46

11 afford the price that I'm asking. And I say, what 14:45:49

12 do you mean you can't afford it. I don't know 14:45:55

13 what that means. It is a negotiation line that 14:45:58

14 every negotiator uses that is meaningless. 14:46:04

15 Particularly that what you can afford as a single 14:46:12

16 negotiator in this market is not the same what you 14:46:15

17 can afford or not afford if you're competitors 14:46:19

18 also agreed to. 14:46:24

19 In the but for world the world 14:46:27

20 looks quite different. It is not just the minus 2 14:46:30

21 percent to publishers but obviously the cover 14:46:33

22 prices would have reflected to the fact that all 14:46:37

23 publishers are facing 7 cents. They would have 14:46:40

24 changed their efficiencies that they impose or 14:46:44

25 lack of efficiencies that they impose on the 14:46:51

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2 system. 14:46:54

3 So you can't simply look at it on a 14:46:54

4 one by one piecemeal because that is not the but 14:46:57

5 for world. The but for world is where we are all 14:47:00

6 facing increased distribution costs. We know in 14:47:03

7 the competitive industry that costs are passed on. 14:47:08

8 It is only monopolists that are forced to eat some 14:47:13

9 of the cost increases. So unless you are facing a 14:47:17

10 completely elastic demand curve you pass this on. 14:47:24

11 Q. You don't know what AMI meant if it 14:47:26

12 said it was unable to pay a 2 percent price 14:47:30

13 increase, correct? 14:47:33

14 MR. PAMPHILIS: Objection, form. 14:47:34

15 A. That's correct. 14:47:35

16 Q. You don't know what Bauer meant if 14:47:35

17 it said it was unable to pay a 2 percent price 14:47:39

18 increase? 14:47:43

19 MR. PAMPHILIS: Objection, form. 14:47:43

20 A. What I do know is any reasonable 14:47:44

21 negotiator would respond to an offer with a 14:47:47

22 counteroffer. And an offer and counteroffer are 14:47:49

23 much more effective if they are accompanied by 14:47:53

24 anything resembling a justification. If you make 14:47:57

25 me an offer and I reject it and you say why are 14:48:01

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2 Q. Do you see there in the second 15:09:47
3 sentence that you write that "Professor Picard 15:09:49
4 assessed the merits of their initiatives and 15:09:52
5 provided me with a quantification of their likely 15:09:58
6 impact on Anderson's cash flow."? 15:10:02

7 A. I see that. 15:10:04

8 Q. In what form did Professor Picard 15:10:05
9 provide you with that quantification? 15:10:08

10 A. I received -- I think he provided 15:10:09
11 it to me in spreadsheet form. 15:10:18

12 Q. Did you receive backup schedules 15:10:24
13 from Professor Picard? 15:10:25

14 MR. PAMPHILIS: Objection. 15:10:27

15 A. I don't recall. 15:10:28

16 Q. Did he provide you with Anderson 15:10:32
17 management created analyses that underlay his 15:10:42
18 quantification? 15:10:44

19 MR. PAMPHILIS: Objection to form. 15:10:45

20 A. I don't recall. 15:10:46

21 Q. Did you ask Professor Picard to 15:10:50
22 explain which of the savings related to Anderson 15:10:54
23 News and which related to Anderson Services? 15:11:00

24 A. Yes, I did. 15:11:02

25 Q. Did you ask him to explain to you 15:11:03

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2 was dependent on one another? 15:12:29

3 MR. PAMPHILIS: Objection to form. 15:12:38

4 A. I don't recall any such discussion. 15:12:39

5 I mean do you mean by dependent if one happens the 15:12:52

6 other one will also happen? Is that what you 15:12:57

7 mean? I'm not sure that I understood your 15:12:59

8 question. 15:13:01

9 Q. Yes, so sort of on a scale from 0 15:13:01

10 to 1 you could measure whether the two 15:13:05

11 probabilities were dependent or independent or the 15:13:08

12 extent to which they were dependent on each other, 15:13:12

13 right? 15:13:15

14 A. Again, I don't understand what 15:13:15

15 you're asking. We didn't have a discussion on 15:13:17

16 probabilities. So obviously if that is your 15:13:19

17 question the answer is no. I thought what you 15:13:21

18 were saying is that if one happens then the other 15:13:25

19 one also happens. And I don't believe he said 15:13:29

20 anything that would lead me to believe that that 15:13:34

21 was his opinion. 15:13:37

22 Q. It was your understanding that the 15:13:39

23 various initiatives were independent of each 15:13:42

24 other? 15:13:44

25 MR. PAMPHILIS: Objection to form. 15:13:44

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2 A. Yes. I mean that is what I 15:13:45
3 inferred from talking to him and the subsequent 15:13:49
4 discussions that I had with management. 15:13:52

5 Q. Who in Anderson management did you 15:13:58
6 discuss the cash flows from these performance 15:14:00
7 initiatives with? 15:14:03

8 MR. PAMPHILIS: Objection to form. 15:14:04

9 A. John Campbell and also Jay Maier. 15:14:05

10 Q. Was it your understanding that John 15:14:11
11 Campbell had prepared many of the underlying 15:14:13
12 initial calculations? 15:14:16

13 A. I believe so, yes. There may have 15:14:20
14 been also Bo Castle. I'm not sure. I spoke to Bo 15:14:23
15 Castle and I'm not sure whether it involved 15:14:31
16 initiatives. As I sit here today I can neither 15:14:33
17 confirm or deny that. I know I talked to Bo 15:14:35
18 Castle. 15:14:39

19 Q. Do you recall anything specific 15:14:40
20 that you discussed with Bo Castle as it related to 15:14:42
21 performance initiatives? 15:14:45

22 A. No, everything that I discussed 15:14:47
23 with him has been transferred into my report. So 15:14:49
24 again I would have to search where Bo Castle shows 15:14:54
25 up and see where it is in the report. 15:14:56

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2 Picard? 15:16:11

3 A. Not in this report, no. 15:16:11

4 Q. Did you at any time make any 15:16:16

5 adjustments to any of the cash flows that you 15:16:20

6 received from Professor Picard? 15:16:23

7 MR. PAMPHILIS: Objection to form. 15:16:24

8 A. I mean I didn't single handedly 15:16:25

9 make an adjustment, but as it turns out he revised 15:16:30

10 his opinion on one initiative and I revised my 15:16:34

11 valuation accordingly. So your question was 15:16:40

12 sufficiently imprecise that I didn't know whether 15:16:43

13 you meant that or not. If that is what you meant, 15:16:46

14 this is my answer. 15:16:49

15 Q. So when he gave you a revised 15:16:49

16 calculation you then incorporated his revised 15:16:52

17 calculation into your DCF model? 15:16:55

18 A. Of course. 15:16:57

19 Q. But am I right that you did not 15:16:57

20 make any adjustments to the cash flows that you 15:17:01

21 received from Professor Picard that didn't come 15:17:04

22 from him? 15:17:07

23 A. That's correct. To the best of my 15:17:10

24 recollection, yes. 15:17:12

25 Q. If you could turn to paragraph 110 15:17:34

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2 Q. So if I could ask you to turn to 15:26:41
3 figure 16 of this response report of July, 15:26:43
4 Exhibit 4. This is on page 44, figure 16. 15:26:47

5 A. Yes. 15:26:52

6 Q. Are these the cash flows that you 15:26:55
7 received from Professor Picard? 15:26:57

8 A. Yes. 15:26:59

9 Q. The information in the right-hand 15:27:02
10 column about which entity they affected, that too 15:27:05
11 is information that you received from Professor 15:27:10
12 Picard? 15:27:13

13 MR. PAMPHILIS: Objection to form. 15:27:13

14 A. Yes. 15:27:13

15 Q. Then if you could turn please to 15:27:17
16 the next page, page 45, figure 17, this is the 15:27:19
17 valuation impact of those same cash flows? 15:27:25

18 A. Yes. 15:27:28

19 Q. And is figure 17 then the result of 15:27:36
20 your running the cash flows that you received from 15:27:39
21 Professor Picard through your DCF models? 15:27:41

22 A. I believe so, yes. 15:27:44

23 Q. And so that takes a number of the 15:27:46
24 cost savings that are projected to occur at 15:27:52
25 Services and then apportions the valuation impact 15:27:58

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2 to News, right? 15:28:01

3 A. Well, it also apportions it amongst 15:28:03

4 Services -- some of it occurs at Prologix and it's 15:28:07

5 apportioned to T&G and to Services and from 15:28:12

6 Services that is the \$28 million and some of it 15:28:18

7 then flows to News and that is the 72 million, and 15:28:20

8 the total is 101675 15:28:26

9 Q. Do you see in the row exchange of 15:28:31

10 delivery window? 15:28:34

11 A. Yes. 15:28:35

12 Q. There is valuation impact at 15:28:36

13 Services of negative \$420,000? 15:28:39

14 A. Yes, I see that. 15:28:41

15 Q. What does that represent? 15:28:42

16 A. I don't remember. As I sit here 15:28:46

17 today I can't recall. I would have to go back and 15:28:49

18 check my notes or actually my model. Actually my 15:28:51

19 model, there is no notes, my model to see why it 15:28:55

20 is minus 420. 15:29:00

21 Q. Do you have any understanding as 15:29:02

22 you sit here today how negative valuation impact 15:29:03

23 on Services could make sense? 15:29:06

24 MR. PAMPHILIS: Objection to form. 15:29:09

25 A. I'm sure that the number is 15:29:10

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2 correct. It has been audited over and over again. 15:29:13
3 The problem is that I don't have any recollection 15:29:16
4 of the mechanics of the spreadsheet how this model 15:29:22
5 was negative. Whether this was compensation or 15:29:26
6 expansion of -- let's see. I simply can't answer 15:29:34
7 that question right now from memory. But I will 15:29:40
8 make sure that I go back to the spreadsheet and 15:29:44
9 trace it down. 15:29:48

10 Q. Regardless of the mechanics of the 15:29:52
11 calculation, do you have an understanding how it 15:29:54
12 could make conceptual sense from a modeling 15:29:56
13 perspective that the valuation impact of this cost 15:29:59
14 savings initiative could be negative for Services? 15:30:01

15 MR. PAMPHILIS: Objection to form. 15:30:04

16 A. Again, as I sit here today I simply 15:30:04
17 can't recall this. I mean there is two negative 15:30:12
18 numbers -- no, there is only one. It is the sum. 15:30:15
19 I don't know. 15:30:21

20 Q. Did you assume in your DCF models 15:30:21
21 that the service fee that would be charged to News 15:30:30
22 would remain constant at 78.5 percent? 15:30:36

23 A. Could you repeat your question? I 15:30:41
24 was still mentally -- 15:30:42

25 Q. Of course. Did you assume in your 15:30:45

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2 Anderson Services? 15:38:47

3 MR. PAMPHILIS: Objection to form. 15:38:47

4 A. Prologix East was an asset owned by 15:38:52

5 Services, so in that regard its assets are the assets of 15:38:56

6 Services. 15:39:06

7 Q. It was owned in part by Anderson 15:39:06

8 Services and in part by the News Group, right? 15:39:11

9 A. Yes. 15:39:13

10 Q. Is it your understanding that 15:39:15

11 Prologix East was sold to the News Group in or 15:39:17

12 around February of 2009? 15:39:21

13 A. I believe that is true, yes. 15:39:23

14 Q. And in fact are the proceeds that 15:39:24

15 Anderson Services received from the sale of its 15:39:33

16 interests in Prologix East reflected in the 15:39:36

17 liquidation proceeds in your analysis? 15:39:39

18 A. Of course, yes. 15:39:41

19 Q. Is it your understanding then that 15:39:42

20 Prologix East thereafter was owned -- was wholly 15:39:48

21 owned by the News Group? 15:39:54

22 A. That's correct. Wait, that's my 15:39:56

23 understanding. Actually what happens after 15:39:59

24 February 9th -- February '09 in the real world is 15:40:01

25 not relevant to my analysis or any cash flows that 15:40:11

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2 I included in the offset to the damages. 15:40:15

3 Whether it was owned by the News 15:40:20

4 Group or anybody else I didn't follow up. So 15:40:25

5 whether they are today owned by who, I don't know. 15:40:31

6 Q. As part of your assignment in this 15:40:37

7 matter did you receive direction from Plaintiffs' 15:40:39

8 counsel about whether to include Prologix East in 15:40:41

9 your analysis? 15:40:45

10 A. I don't believe so. I mean I 15:40:52

11 valued Services' assets and as an economist I came 15:40:55

12 to the conclusion that Prologix East was an asset 15:41:01

13 owned in part, large part, by Services. So as 15:41:05

14 such I considered it. I don't recall having a 15:41:12

15 discussion with counsel about that. I may have 15:41:17

16 but I don't recall it. 15:41:21

17 Q. I think you said earlier that as 15:41:22

18 part of your calculation of damages in this case 15:41:27

19 you were trying to calculate damages to Anderson 15:41:30

20 News as a company and to Anderson Services as a 15:41:37

21 company; is that correct? 15:41:39

22 A. That's correct. 15:41:40

23 Q. Were you trying to calculate 15:41:40

24 damages to Prologix East as a company? 15:41:43

25 A. No. 15:41:46

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2 which I interpreted it is reasonable.

16:17:10

3 Q. Let me ask you about your valuation
4 in the Rural Metro case.

16:17:13

16:17:18

5 A. Okay.

16:17:21

6 Q. In that case you performed a
7 valuation using discounted cash flow methodology,
8 didn't you?

16:17:22

16:17:23

16:17:27

9 A. I did.

16:17:27

10 Q. And did you then add the amount of
11 noninterest bearing liabilities?

16:17:28

16:17:33

12 A. No.

16:17:38

13 Q. You didn't do that in the Rural
14 Metro case, did you?

16:17:39

16:17:42

15 A. No, of course not.

16:17:43

16 Q. Have you ever in any other
17 litigation which you valued a company, have you
18 ever added the amount of the noninterest bearing
19 liabilities to the results of your discounted cash
20 flow calculation?

16:17:47

16:17:48

16:17:51

16:17:54

16:17:57

21 A. I didn't have to. This is the
22 first case where the damages are the destruction
23 of the assets. All the other cases, Rural Metro,
24 was a question of the value of equity. It was not
25 a question of the value of assets. That was not a

16:18:03

16:18:05

16:18:09

16:18:13

16:18:20

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2 believe anybody will dispute. 16:19:39

3 Q. Have you ever worked on any other 16:19:40
4 case in which it was your opinion that damages 16:19:43
5 were the destruction of total assets? 16:19:45

6 A. No, because all the other cases 16:19:48
7 were not forced bankruptcy. All the other cases 16:19:50
8 was a diminution of value of the equity, or the 16:19:55
9 underpricing of equity, or the underpricing of 16:20:00
10 debt and equity. 16:20:03

11 Q. Have you ever worked on a 16:20:07
12 consulting engagement in which in your opinion the 16:20:08
13 measure of damages was destruction of total 16:20:10
14 assets? 16:20:13

15 A. It wasn't a total destruction of 16:20:14
16 the total assets. It was a question of valuing 16:20:17
17 the entire firm which is total assets. And there 16:20:20
18 of course I would add I was involved in the sale 16:20:25
19 of three private companies and the question when 16:20:27
20 you sell a private company is, what is being sold. 16:20:30
21 Are you selling total assets or are you selling 16:20:34
22 the equity. In a situation like that if the sale 16:20:36
23 is total assets then you do what I did here. If 16:20:40
24 on the other hand the sale is the sale of the 16:20:47
25 equity and you assume the liabilities, then you do 16:20:50

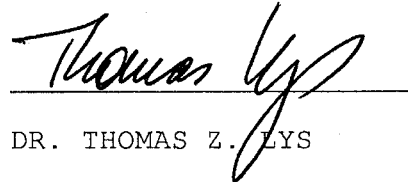
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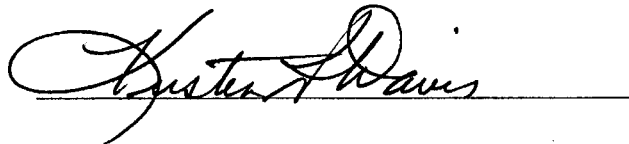
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THE VIDEOGRAPHER: This concludes the
videotape deposition at 17:58.
(TIME NOTED: 5:58 P.M.)

17:58:08
17:58:12
17:58:16


DR. THOMAS Z. LYS

Subscribed and sworn to before me
this 22nd day of October, 2014





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1

2 STATE OF NEW YORK) Pg__ of__Pgs

3 ss:

4 COUNTY OF NEW YORK)

5

6 I wish to make the following changes, for the
 7 following reasons: Please see the attached errata sheet

8 PAGE LINE

9 _____ CHANGE: _____

10 _____ REASON: _____

11 _____ CHANGE: _____

12 _____ REASON: _____

13 _____ CHANGE: _____

14 _____ REASON: _____

15 _____ CHANGE: _____

16 _____ REASON: _____

17 _____ CHANGE: _____

18 _____ REASON: _____

19 _____ CHANGE: _____

20 _____ REASON: _____

21 _____ CHANGE: _____

22 _____ REASON: _____

23 _____ CHANGE: _____

24 _____ REASON: _____

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Thomas Z. Lys – Vol. 1, Errata Sheet

Anderson News, L.L.C. et al. v. American Media Inc. et al., No. 09 Civ. 2227

Deposition Date: September 19, 2014

Page	Line	Change	Reason
Throughout		Change “T&G” to “TNG”	Correction
Throughout		Change “Croger” to “Kroger”	Correction
Throughout		Change “Crogers” to “Kroger”	Correction
Throughout		Change “X anti” to “ex ante”	Correction
Throughout		Change “X post” to “ex post”	Correction
9	13	Change “won’t” to “would not”	Clarification
15	21	Add “it” after “consulted”	Clarification
19	24	Change “accept” to “accepted”	Correction
23	10	Change “sterning” to “stern”	Correction
25	15	Add “as” before “such”	Clarification
28	16	Change “published” to “publish”	Correction
35	18	Change “litigation” to “legislation”	Correction
36	22	Change “resolved on” to “revolved around”	Clarification
39	20	Change “17 million” to “70 million”	Correction
39	21	Change “17 million” to “70 million”	Correction
41	14	Change “wept” to “went”	Correction
44	6	Change “of” to “as”	Correction
45	4-5	Change “producing – from selling” to “distributing”	Clarification
45	6	Change “import” to “distribution”	Correction of fact
46	16	Change “holy” to “Hulley”	Correction

Page	Line	Change	Reason
47	15	Change “has” to “have” and “sur” to “third”	Correction
47	20	Change “an evaluator” to “a valuator”	Correction
49	5	Change “sense” to “bunch”	Correction
50	14	Delete “the”	Clarification
55	3 and 5	Change “Illinoian” to “Illinoisian”	Correction
55	4	Delete “not” between “is” and “an”	Clarification
55	24	Change “ask” to “answer”	Correction
55	25	Add “be” after “Anderson” and add “for” after “sold”	Clarification
60	3	Change “an evaluator” to “a valuator”	Correction
61	13	Delete “this”	Clarification
65	16	Change “was” to “in”	Clarification
67	15	Change “to” to “or”	Correction
68	25	Change “unsustainable” to “unassailable”	Correction
70	18	Change “commutations” to “computations”	Correction
77	6	Change “parlez” to “parler”	Correction
81	14	Change “on” to “off the” and add “of my head” after “top”	Clarification
86	6	Change “economics” to “economic”	Correction
88	23	Delete “an”	Clarification
89	17	Add “it captures” after “So”	Clarification
89	23	Delete “is” and add “is” after “forward”	Correction
89	25	Change “inherent” to “inherit”	Correction
90	2	Change “inherent” to “inherit”	Correction

Page	Line	Change	Reason
90	3	Change “valid” to “valued”	Clarification
90	3	Add “in the” after “implied”	Clarification
91	12	Change “this” to “these”	Clarification
91	12	Change “incurred” to “anchored”	Correction
91	16-17	Add “were in the” between “that” and “historical”	Clarification
91	23	Change “today” to “to a”	Correction
94	18	Change “subdown” to “sit down”	Correction
97	8 and 14	Change “effects” to “affects”	Correction
99	14	Change “you’re” to “your”	Correction
107	5	Change “Ginsberg” to “Grinberg”	Correction
107	6	Change “call” to “called”	Correction
121	12	Change “gave” to “gain”	Correction
130	8-9	Change “it do” to “he does”	Clarification
130	15	Change “actually twists” to “only twists one dial when in fact he should twist”	Clarification
130	17	Change “in” to “from”	Clarification
132	15	Change “goes” to “is”	Correction
136	24	Change “with” to “were”	Correction
137	3	Change “inflation” to “deflation”	Correction
137	4	Change “in” to “at”	Clarification
137	5	Add “to” after “lending”	Clarification
140	5	Change “contest” to “can test”	Correction
144	9	Delete “a”	Clarification
155	13	Add “fluctuations of” between “the” and “market”	Clarification

Page	Line	Change	Reason
156	13	Change “unsalable” to “unassailable”	Correction
160	16	Change “in” to “is”	Correction
160	19	Change “\$30 million” to “\$13 million”	Correction
163	23	Change “think” to “thinks”	Correction
166	20	Change “fact” to “facts”	Correction
169	9	Change “that” to “than”	Correction
175	19	Change “suspects” to “suspect”	Correction
183	15	Change “nonsequitur” to “non sequitur”	Correction
183	16	Add “how” between “see” and “one”	Clarification
183	19	Change “expect” to “expert”	Correction
184	11	Add “he” between “what” and “means”	Clarification
186	16	Change “concessions” to “concession”	Correction
187	12	Change “its” to “it’s”	Correction
190	23-24	Delete “is from the negotiation”	Clarification
190	25	Change “the” to “their”	Correction
191	2	Change “anger” to “anchor”	Correction
191	5	Change “you would expect it to be accepted” to “they would expect to be accepted”	Clarification
196	8	Add “of” between “one” and “the”	Clarification
198	10	Change “elastic” to “inelastic”	Correction
199	13	Change “you” to “your”	Correction
214	9	Change “exchange” to “expansion”	Correction
215	4	Change “how this model” to “and why this number”	Clarification

Page	Line	Change	Reason
215	5	Change “compensation” to “contraction”	Correction
218	3	Add “combined” between “the” and “PL East”	Clarification
219	4	Change “a” to “its”	Correction
219	6	Change “contractible” to “tractable”	Correction
225	4	Change “the albeit” to “this”	Clarification
225	5	Change both “affect” to “effect”	Correction
228	15	Change “production” to “reduction”	Correction
233	13	Change “maybe it did, but” to “if it did”	Clarification
234	22	Change “you’re” to “your”	Correction
234	23	Change “same” to “say”	Correction
238	17	Change “is” to “are”	Correction
238	19	Change “affect” to “effect”	Correction
242	20	Change “medium” to “median”	Correction
243	11	Delete “minus”	Clarification
247	9	Change “precision” to “precisely”	Correction
250	7	Change “bankruptcy” to “bankruptcies”	Correction
251	14	Change “incredible” to “relevant”	Correction
253	20	Change “liabilities interest bearing” to “interest bearing liabilities”	Clarification
255	14 and 15	Change “principal” to “principle”	Correction
255	15	Change “they are” to “their”	Correction
264	21	Change “gathered” to “answered in the report”	Clarification
273	3	Change “unwinded” to “unwind”	Clarification
273	25	Change “lost” to “loss”	Correction

Page	Line	Change	Reason
274	5	Change "any" to "suffer any damages"	Clarification
274	23	Change "allege" to "alleged"	Correction
274	25	Add "argument that" between "an" and "Anderson"	Clarification
280	16	Change "is" to "are"	Clarification
280	17	Change "liability" to "reliability"	Correction
280	17	Change "the" to "a"	Correction
280	18	Add "and would have" before "addressed"	Clarification
291	18-19	Change "unwilling or willing try" to "unwillingly or willingly trying"	Clarification
297	14	Change "compensate" to "concentrate"	Correction
307	9 and 10	Change "122" to "122.150"	Clarification
307	10	Change "125" to "125.428"	Clarification
307	11	Change "207" to "2007"	Correction
307	12	Change "125428" to "125.428"	Clarification
307	12	Change "208" to "2008"	Correction
307	16 and 17	Change "122709" to "122.709"	Clarification
307	16 and 18	Change "128653" to "128.653"	Clarification
307	19	Delete "that 42204"	Clarification
308	5 and 6	Change "pie" to "pi"	Correction